

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 389 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARENDRA VALLABHDAS KANABAR

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

Mr. U.A. Trivedi, APP for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 03/05/99

ORAL JUDGEMENT

By this application, the petitioner who is alleged to have committed the offences punishable under Section 302, 201, 109, 120-B, 498A read with Section 114 of the Indian Penal Code, prays for quashing of the order passed by the learned Judicial Magistrate (FC) at Jam-Khambhalia and confirmed after some modification in revision, remanding him to police custody for a period of 3 days.

2. A complaint against the present petitioner is

lodged with Jam-Khambhalia police station of the above stated offences. He was arrested on 6th March 1999 and then produced before the learned Judicial Magistrate (FC) at Jam-Khambhalia on 7th March 1999. The police then prayed for further remand. The learned Judicial Magistrate, Jam-Khambhalia granted the police remand for 7 days. The revision application was then preferred before the learned Sessions Judge at Jamnagar which was then assigned to the learned Additional Sessions Judge, Jamnagar who hearing the parties at length and considering several decisions passed the order on 21st April 1999 confirming the order with some modification. Instead of remanding the petitioner for 7 days to police custody he passed the order to remand the petitioner to police custody for 3 days. The said order is challenged in this Special Criminal Application.

3. Mr. A.D. Shah, the learned advocate for the petitioner contends that the powers to remand in police custody should not be exercised as a matter of course, for liberty of the accused cannot be undermined. True the law views with disfavour the detention in police custody, and so the powers to remand to police custody are not to be exercised mechanically as a matter of patently routine order. The Magistrate has to exercise the powers judiciously on the material placed before him. If he finds on perusal of the materials before him that there is a just ground to remand he may remand the accused to police custody for a period not exceeding 15 days. For effective & thorough investigation or for going to the root of the case or to have a clue or tracing out property or person or guarding the interest of the prosecution if police remand is found necessary, the Magistrate may grant remand rather than throttling the investigation on the ground of accused's liberty because police investigation is the bedrock of criminal trial. Any infirmity or defect if left out in its chain, it may result in breakdown of prosecution case which may result in acquittal. The crimes are, by the march of science, committed in secrecy or resorting to ultra modern devices or adroitness and using up-to-the minute modern weapons. The police has to extract truth from half-truth or suppressed or diversified or tortuous or distorted versions remaining extra-cautious. It cannot prefer to keep any possibility out of consideration keeping in mind the saying rogues outwit even the wisest men. It has got to adopt diverse methods within law and delve into the search of any possible hidden or implied cabal or intrigue for successful completion of investigation. In short investigation is tardy and tedious process. At the same time the Magistrate should

also try to know that the police's request for remand in honest and not for oblique motive or for harassing the accused, or without any just cause or for saving its skin. The Magistrate has therefore to strike the balance between the police's requirement and liberty of the accused. His order should not prejudice either the investigation or the liberty of the accused, and should not turn out to be the largesse to either. This Court has, in the case of *Siyaram Gopichand Gupta & Ors vs. State of Gujarat* - 31 (2) GLR 905 made the law clear laying down that while granting the remand, necessity of maintaining the balance between personal liberty and the need to have thorough investigation and collection of evidence cannot be ignored. Obtaining necessary information for thorough investigation from the accused otherwise than torture is a universally recognised principle. The question of remand to the police is required to be decided on its peculiar facts of each case. When remand of the accused is found to be necessary for just investigation into the offence or thorough investigation into the offence, Court has to grant the remand rather than throttling the investigation and leaning towards the accused on the ground of personal liberty.

4. It is submitted on behalf of the petitioner that on 7 points the remand was sought for. As made clear by the learned Addl. Sessions Judge, Jamnagar on no ground the remand is justified. Still however he has preferred to grant remand for 3 days. The order passed by him is therefore required to be quashed.

5. The learned Judge has, on two points, it seems, granted the remand. According to him for necessary interrogation the remand is necessary. *Ajitsinh Jadeja* is the co-accused. He has been interrogated by the police. Now to have a clue, cross-checking found necessary the police should have an opportunity to interrogate the petitioner, the police remand sought for cannot be denied. The Supreme Court, in the case of *Miss Harsh Sawhney vs. Union Territory (Chandigarh Admn)* AIR 1978 S.C. 1016 has laid down while releasing the petitioner of that petition on bail, that making the search of the premises and interrogation were no grounds for taking the accused into custody. It is made clear therein that custodial interrogation is always found to be inherently coercive. The interrogation in my view can be made by the police whenever the same is reasonably required even if the accused is on bail and not in police custody. If the accused is in judicial custody taking the permission of the concerned Judicial Magistrate

police can interrogate. Consequently, the ground that the petitioner is required to be interrogated cannot be considered to be the just ground for remitting him to police remand. However, in this case, on another ground the police remand can be justified.

6. Certain goods, articles and things are found from the room where the deceased was staying. The goods were carried from one place to another by Matador under the instruction of the present petitioner. Certain goods are yet to be recovered as it seems from the reasonings of the lower court on Pages No. 52 & 53. Whether any thing is missing or while checking the goods it appears to the police that some goods having a link are missing and for that interrogation at the spot is necessary, the presence of the accused in that case in the police custody would be absolutely necessary. The remand granted for 3 days must be upheld so that the police may have a chance to delve into the search of any possible hidden or implied cabal.

7. The learned A.P.P. has raised a point about exercise of power by this Court under Article 226 of the Constitution. According to him, feeling aggrieved by the order of the learned Judicial Magistrate at Khambhalia when the petitioner preferred the revision application before the Court of Sessions wherein he also failed, he cannot now be encouraged entertaining this special petition under Article 226 of the Constitution because no one can be permitted to circumvent the provisions of law and thereby frustrate the real object. In my view even if the party who fails in revision before the lower court prefers the writ petition, the same can be entertained not to circumvent the provision of law as contended, but to do complete justice. In such cases liberty of accused is involved. The High Court has the supervisory jurisdiction. It is therefore vested with powers to examine validity & legality or otherwise of the order challenged. This court therefore can examine whether the order in question is passed on relevant grounds and in accordance with law applicable. It is therefore open to this court to check whether powers are rightly exercised or there is colourable exercise of powers. Such powers under Art.226 of the Constitution are to be exercised sparingly. In view of the matter, the contention that the court may not entertain this petition under Art. 226 must fail. For the aforesaid reasons the impugned order is legal & valid and interference of this court is not warranted.

8. It is also the contention of the learned advocate

representing the petitioner that for the purpose of getting confessional statement by coercive measures the police has prayed for remand which should be frown upon by this Court. It is held by this Court in the case of Siyaram Gopichand Gupta & Others vs. State of Gujarat 1990 (1) G.L.H. 21, that remand to police custody cannot be refused on the ground that police may adopt third degree method. The police has a right to get the information from the accused if the same is within his knowledge but that too not adopting the third degree tactics but by skill with well accepted scientific methods and equipments. So if by skill and intelligence the police wants to interrogate so as to reach the root finding out the clue, the remand cannot be refused. If at all the police resort to third degree it is open to the petitioner to complain before the Magistrate about the ill-treatment.

9. Considering the rival submissions, I think it necessary to guard the interest of both. At the time of interrogation it would be open to the petitioner to keep his advocate present but not within the hearing distance but at a visible distance and the advocate who will remain present will not in any way hamper or interrupt the investigation being carried out by the Investigating Officer. If the petitioner complains about any pain or prays for any medical aid, the police shall make the same available easily to him taking to the Civil Hospital or other Government hospital or calling the doctor to the police station.

10. Under the circumstances, I see no justification to interfere with the order passed. The Special Criminal Application being devoid of merits is required to be rejected and is rejected accordingly. The stay granted by the learned Additional Sessions Judge, Jamnagar, shall now cease to operate.

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(rmr).